

United States' Response to the International Law Commission's Request for Information Relating to the Formation and Evidence of Customary International Law

The United States is pleased to respond to the International Law Commission's request for information on our views relating to the formation of customary international law ("CIL") and the types of evidence suitable for discerning such law.

This response includes selected statements in which some part of the United States' analysis regarding the formation or evidence of CIL is explained. Each example below reflects our view in the specific situation addressed, based on past circumstances and the state of the law as it existed at that time. This list does not capture every instance in which the United States has expressed its views regarding the formation and evidence of CIL generally or taken a position on whether a specific rule constitutes a rule of CIL. In preparing this response, we have focused on views of the Executive branch of the U.S. government that have not already been cited by the Special Rapporteur in the preliminary report on this topic, which we believe will be of most use to the Commission in its work.

This response draws extensively from the Digest of United States Practice in International Law, which is produced annually by the State Department's Office of the Legal Adviser. The Digest catalogues important activity from the prior calendar year regarding international law. Editions of the Digest from 1989 forward are available at the website of the Office of the Legal Adviser (<http://www.state.gov/s/l>).

EXAMPLES OF UNITED STATES GOVERNMENT STATEMENTS RELATING TO THE FORMATION AND EVIDENCE OF CUSTOMARY INTERNATIONAL LAW

1. Statement by the Government of the United States in the United Nations General Assembly's Sixth Committee on the Report of the International Law Commission on the Work of its Sixty-Fourth Session, November 5, 2012 (addressing the Commission's work on the obligation to extradite or prosecute), *available at* <http://usun.state.gov/briefing/statements/200301.htm>.
2. Submission of the United States of America, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23 (2012), *available at* <http://www.state.gov/documents/organization/201834.pdf>.
3. Response of the Government of the United States of America to the Inter-American Commission on Human Rights regarding juveniles sentenced to life without parole (April 2007), *available at* <http://2001-2009.state.gov/s/l/2007/112681.htm>.
4. Counter-Memorial of Respondent United States of America, *Glamis Gold, Ltd. v. United States of America* (2006), at Part IV(A) and IV(C), *available at* <http://www.state.gov/documents/organization/73686.pdf>.
5. Written Statement of the Government of the United States of America concerning the Request of the United Nations General Assembly for an Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, June 20, 1995, at pp. 8-9, *available at* <http://www.icj-cij.org/docket/files/95/8700.pdf>.